

Regular Session, 2010

HOUSE BILL NO. 191

BY REPRESENTATIVES PERRY, ANDERS, ARNOLD, BOBBY BADON, BALDONE, BARRAS, BILLIOT, BROSSETT, BURFORD, HENRY BURNS, TIM BURNS, CARTER, CHAMPAGNE, CHANEY, CONNICK, CROMER, DOERGE, DOVE, HARDY, HENDERSON, HENRY, HINES, HOFFMANN, HUTTER, JOHNSON, LABRUZZO, LAMBERT, LEGER, LIGI, LORUSSO, MILLS, MONICA, NOWLIN, PEARSON, PUGH, RICHARD, ROBIDEAUX, SCHRODER, SIMON, SMILEY, JANE SMITH, ST. GERMAIN, TALBOT, TEMPLET, THIBAUT, THIERRY, WHITE, AND WILLIAMS AND SENATORS ALARIO, AMEDEE, APPEL, BROOME, CROWE, DUPLESSIS, HEITMEIER, KOSTELKA, LONG, MARTINY, MICHOT, MOUNT, SHAW, AND THOMPSON

CRIMINAL/PROCEDURE: Amends provisions of the habitual offender law

1 AN ACT

2 To amend and reenact R.S. 15:529.1(A), (C), (D), and (E), relative to the habitual offender  
3 law; to provide for increased penalties for multiple sex offenses; to repeal statutory  
4 language authorizing the use of juvenile adjudications of delinquency to enhance  
5 penalty provisions for felony offenses; to provide for technical changes; and to  
6 provide for related matters.

7 Be it enacted by the Legislature of Louisiana:

8 Section 1. R.S. 15:529.1(A), (C), (D), and (E) are hereby amended and reenacted to  
9 read as follows:

10 §529.1. Sentences for second and subsequent offenses; certificate of warden or clerk  
11 of court in the state of Louisiana as evidence

12 A.~~(H)~~ Any person who, after having been convicted within this state of a  
13 felony ~~or adjudicated a delinquent under Title VIII of the Louisiana Children's Code~~  
14 ~~for the commission of a felony-grade violation of either the Louisiana Controlled~~  
15 ~~Dangerous Substances Law involving the manufacture, distribution, or possession~~  
16 ~~with intent to distribute a controlled dangerous substance or a crime of violence as~~

1 ~~listed in Paragraph (2) of this Subsection~~, or who, after having been convicted under  
2 the laws of any other state or of the United States, or any foreign government of a  
3 crime which, if committed in this state would be a felony, thereafter commits any  
4 subsequent felony within this state, upon conviction of said felony, shall be punished  
5 as follows:

6 ~~(a)~~(1) If the second felony is such that upon a first conviction the offender  
7 would be punishable by imprisonment for any term less than his natural life, then the  
8 sentence to imprisonment shall be for a determinate term not less than one-half the  
9 longest term and not more than twice the longest term prescribed for a first  
10 conviction;

11 (2) If the second felony and the prior felony are sex offenses as defined in  
12 R.S. 15:541, or the prior felony would be a sex offense as defined in R.S. 15:541,  
13 except it occurred prior to June 18, 1992, or the conviction was obtained under the  
14 laws of any other state, the United States, or any foreign government, the person shall  
15 be sentenced to imprisonment at hard labor for a determinate term not less than two-  
16 thirds of the longest possible sentence for the conviction and not more than three  
17 times the longest possible sentence prescribed for a first conviction, without benefit  
18 of probation, parole, or suspension of sentence.

19 ~~(b)~~(3) If the third felony is such that upon a first conviction, the offender  
20 would be punishable by imprisonment for any term less than his natural life then:

21 ~~(i)~~(a) The person shall be sentenced to imprisonment for a determinate term  
22 not less than two-thirds of the longest possible sentence for the conviction and not  
23 more than twice the longest possible sentence prescribed for a first conviction; or

24 ~~(ii)~~(b) If the third felony and the two prior felonies are felonies defined as a  
25 crime of violence under R.S. 14:2(B), a sex offense as defined in R.S. 15:540 et seq.  
26 when the victim is under the age of eighteen at the time of commission of the offense,  
27 or as a violation of the Uniform Controlled Dangerous Substances Law punishable by  
28 imprisonment for ten years or more, or any other crimes punishable by imprisonment  
29 for twelve years or more, or any combination of such crimes, the person shall be

1 imprisoned for the remainder of his natural life, without benefit of parole, probation,  
2 or suspension of sentence.

3 ~~(e)~~(4) If the fourth or subsequent felony is such that, upon a first conviction  
4 the offender would be punishable by imprisonment for any term less than his natural  
5 life then:

6 ~~(i)~~(a) The person shall be sentenced to imprisonment for the fourth or  
7 subsequent felony for a determinate term not less than the longest prescribed for a  
8 first conviction but in no event less than twenty years and not more than his natural  
9 life; or

10 ~~(ii)~~ (b) If the fourth felony and two of the prior felonies are felonies defined  
11 as a crime of violence under R.S. 14:2(B), a sex offense as defined in R.S. 15:540 et  
12 seq. when the victim is under the age of eighteen at the time of commission of the  
13 offense, or as a violation of the Uniform Controlled Dangerous Substances Law  
14 punishable by imprisonment for ten years or more, or of any other crime punishable  
15 by imprisonment for twelve years or more, or any combination of such crimes, the  
16 person shall be imprisoned for the remainder of his natural life, without benefit of  
17 parole, probation, or suspension of sentence.

18 ~~(2)(a) Attempted first degree murder.~~

19 ~~(b) Attempted second degree murder.~~

20 ~~(c) Manslaughter.~~

21 ~~(d) Armed robbery.~~

22 ~~(e) Forcible rape.~~

23 ~~(f) Simple rape.~~

24 ~~(g) Second degree kidnapping.~~

25 ~~(h) A second or subsequent aggravated battery.~~

26 ~~(i) A second or subsequent aggravated burglary.~~

27 ~~(j) A second or subsequent offense of burglary of an inhabited dwelling.~~

28 \* \* \*

1 C. The current offense shall not be counted as, respectively, a second, third,  
2 fourth, or higher offense if more than ten years have elapsed between the date of the  
3 commission of the current offense or offenses and the expiration of the maximum  
4 sentence or sentences of the previous conviction or convictions, ~~or adjudication or~~  
5 ~~adjudications of delinquency~~, or between the expiration of the maximum sentence or  
6 sentences of each preceding conviction or convictions ~~or adjudication or adjudications~~  
7 ~~of delinquency~~ alleged in the multiple offender bill and the date of the commission  
8 of the following offense or offenses. In computing the intervals of time as provided  
9 herein, any period of ~~servitude~~ incarceration by a person in a penal institution, within  
10 or without the state, shall not be included in the computation of any of said ten-year  
11 periods between the expiration of the maximum sentence or sentences and the next  
12 succeeding offense or offenses.

13 D.(1)(a) If, at any time, either after conviction or sentence, it shall appear that  
14 a person convicted of a felony has previously been convicted of a felony under the  
15 laws of this state ~~or adjudicated a delinquent under Title VIII of the Louisiana~~  
16 ~~Children's Code for the commission of a felony-grade violation of either the~~  
17 ~~Louisiana Controlled Dangerous Substances Law involving the manufacture,~~  
18 ~~distribution, or possession with intent to distribute a controlled dangerous substance~~  
19 ~~or a crime of violence as listed in Paragraph (2) of Subsection A of this Section, or~~  
20 has been convicted under the laws of any other state, or of the United States, or of any  
21 foreign government or country, of a crime, which, if committed in this state would be  
22 a felony, the district attorney of the parish in which subsequent conviction was had  
23 may file an information accusing the person of a previous conviction ~~or adjudication~~  
24 ~~of delinquency~~. Whereupon the court in which the subsequent conviction was had  
25 shall cause the person, whether confined in prison or otherwise, to be brought before  
26 it and shall inform him of the allegation contained in the information and of his right  
27 to be tried as to the truth thereof according to law and shall require the offender to say  
28 whether the allegations are true. If he denies the allegation of the information or  
29 refuses to answer or remains silent, his plea or the fact of his silence shall be entered

1 on the record and he shall be given fifteen days to file particular objections to the  
2 information, as provided in Subparagraph (b) of this Paragraph. The judge shall fix  
3 a day to inquire whether the offender has been convicted of a prior felony or felonies  
4 ~~or adjudicated a delinquent for an offense or offenses specified above~~ as set forth in  
5 the information.

6 (b) Except as otherwise provided in this Subsection, the district attorney shall  
7 have the burden of proof beyond a reasonable doubt on any issue of fact. The  
8 presumption of regularity of judgment shall be sufficient to meet the original burden  
9 of proof. If the person claims that any conviction ~~or adjudication of delinquency~~  
10 alleged is invalid, he shall file a written response to the information. A copy of the  
11 response shall be served upon the prosecutor. A person claiming that a conviction ~~or~~  
12 ~~adjudication of delinquency~~ alleged in the information was obtained in violation of  
13 the Constitutions of Louisiana or of the United States shall set forth his claim, and the  
14 factual basis therefor, with particularity in his response to the information. The  
15 person shall have the burden of proof, by a preponderance of the evidence, on any  
16 issue of fact raised by the response. Any challenge to a previous conviction ~~or~~  
17 ~~adjudication of delinquency~~ which is not made before sentence is imposed may not  
18 thereafter be raised to attack the sentence.

19 (2) Following a contradictory hearing, the court shall find that the defendant  
20 is:

21 (a) A second offender upon proof of a prior felony conviction ~~or adjudication~~  
22 ~~of delinquency as authorized in Subsection A.~~

23 (b) A third offender, upon proof of two prior felony convictions ~~or~~  
24 ~~adjudications of delinquency as authorized in Subsection A, or any combination~~  
25 ~~thereof.~~

26 (c) A fourth offender, upon proof of three or more prior felony convictions  
27 ~~or adjudications of delinquency as authorized in Subsection A, or any combination~~  
28 ~~thereof.~~

(3) When the judge finds that he has been convicted of a prior felony or felonies ~~or adjudicated a delinquent as authorized in Subsection A,~~ or if he acknowledges or confesses in open court, after being duly cautioned as to his rights, that he has been so convicted ~~or adjudicated,~~ the court shall sentence him to the punishment prescribed in this Section, and shall vacate the previous sentence if already imposed, deducting from the new sentence the time actually served under the sentence so vacated. The court shall provide written reasons for its determination. Either party may seek review of an adverse ruling.

E. Whenever it shall become known to any superintendent or prison, probation, parole, police, or other peace officer, that any person charged with or convicted of a felony has been previously convicted ~~or adjudicated delinquent within the meaning of this Section,~~ he shall immediately report the fact to the district attorney of the parish in which the charge lies, or the conviction has been had.

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#### DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

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Perry

HB No. 191

**Abstract:** Provides for increased penalties for repeat sex offenders and repeals provisions of habitual offender law declared unconstitutional in *State v. Brown*.

Present law provides for increased penalties for repeat or habitual offenders.

Present law provides that if the second felony is such that upon a first conviction the offender would be punishable by imprisonment for any term less than his natural life, then the sentence to imprisonment shall be for a determinate term not less than 1/2 the longest term and not more than twice the longest term prescribed for a first conviction.

Proposed law retains the provisions of present law and provides that if the second felony and the prior felony are sex offenses or the prior felony would be a sex offense but the offense occurred prior to June 18, 1992, or conviction was obtained under the laws of any other state, the U.S., or any foreign government, the person shall be sentenced to imprisonment for a determinate term not less than 2/3 of the longest possible sentence for the conviction and not more than three times the longest possible sentence prescribed for a first conviction, without benefit of probation, parole, or suspension of sentence.

Present law further provides increased penalty provisions for third, fourth, or subsequent felony convictions.

Present law further provides for the use of adjudications of delinquency for certain crimes of violence and violations of the Uniform Controlled Dangerous Substances Law to obtain increased penalties pursuant to the habitual offender law.

*The Louisiana Supreme Court in State v. Brown, 879 So.2d 1276, 2003-2788 (La. 7/6/04) declared that the use of juvenile adjudications of delinquency to be counted as predicate offenses for the purposes of the habitual offender law was unconstitutional.*

Proposed law repeals the provisions of present law declared to be unconstitutional in the case of *State v. Brown*.

(Amends R.S. 15:529.1(A), (C), (D), and (E))